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Counsel for Plaintiff ALPS Property & Casualty Insurance Company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

ALPS PROPERTY & CASUALTY
INSURANCE COMPANY,

Plaintiff,

v.

HAROLD P. GEWERTER;
HAROLD P. GEWERTER, ESQ., LTD.; and
VINCENT HESSER,

Defendants.

Case No. 2:17-cv-02057-JCM-PAL

**PLAINTIFF ALPS PROPERTY &
CASUALTY INSURANCE COMPANY’S
UNOPPOSED MOTION FOR
EXTENSION OF TIME TO RESPOND
TO THE GEWERTER DEFENDANTS’
AMENDED COUNTERCLAIM
(FIRST REQUEST)**

Plaintiff ALPS Property & Casualty Insurance Company (“ALPS”), pursuant to Federal Rule of Civil Procedure 6(b)(1)(B), LR IA 6-1, and LR 7-2(a), hereby submits the following Motion for Extension of Time to Respond to the Amended Counterclaim (“Amended Counterclaim”) (ECF No. 39) of Defendants Harold P. Gewerter (“Gewerter”) and Harold P. Gewerter, Esq., Ltd. (“Gewerter Firm” and together with Gewerter, “Gewerter Defendants”). By this motion, ALPS requests a brief one-week extension to October 17, 2018—the date of

1 this motion—to file its response to the Amended Counterclaim. This unopposed motion is
2 ALPS’s first request for an extension of time to respond to the Amended Counterclaim and is
3 based upon the following memorandum of points and authorities.

4
5 Dated this 17th day of October, 2018.

ALPS PROPERTY & CASUALTY
INSURANCE COMPANY, Plaintiff

6
7 /s/ Brooke H. McCarthy

Kevin D. Hartzell (*pro hac vice*)

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12
13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. BACKGROUND**

15 On September 20, 2018, the Gewerter Defendants filed their Answer and Counterclaim
16 in response to ALPS’s Complaint. (ECF No. 38). Upon receiving notice of the filing, counsel
17 for ALPS calendared the October 10, 2018 deadline to respond to the Gewerter Defendants’
18 Answer and Counterclaim. On September 26, 2018, the Gewerter Defendants filed the
19 Amended Counterclaim. (ECF No. 39). Upon service of the Amended Counterclaim, counsel
20 for ALPS inadvertently re-calendared the deadline to respond to the Amended Counterclaim to
21 October 17, 2018—21 days after the September 26, 2018 filing of the Amended
22 Counterclaim—instead of leaving the calendared deadline as October 10, 2017. *See* Fed. R.
23 Civ. P. 15(a)(3). Upon discovery of this inadvertent error on October 17, 2018, in preparation
24 to file its response to the Amended Counterclaim, counsel for ALPS immediately contacted
25 counsel for the Gewerter Defendants to inquire whether the Gewerter Defendants would oppose
26 this motion for a one-week extension of time to respond to the Amended Counterclaim.
27
28

Counsel for the Gewerter Defendants has agreed the Gewerter Defendants do not oppose the relief requested in this motion. ALPS was prepared to file its response to the Amended Counterclaim today, on October 17, 2018, and will do so.

II. ARGUMENT

Under Federal Rule of Procedure 6(b)(1)(B), the Court may, “for good cause shown, extend the time” to file a response to a pleading “if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B); *Fed. Nat’l Mortg. Ass’n v. Canyon Willow Owners Ass’n*, No. 2:16-cv-00203-JCM-CWH, 2017 WL 2733776, at *1 (D. Nev. Jan. 17, 2017). Similarly, under this District’s Local Rules, the Court may grant a request for extension of time after “expiration of the specified period” if an “attorney demonstrates that the failure to file the motion before the deadline expired was the result of excusable neglect.” LR IA 6-1(a). As explained by the Court in *Fed. Nat’l Mortg. Ass’n v. Canyon Willow Owners Ass’n*:

Excusable neglect is an “elastic concept” that is determined by considering, *inter alia*: “the danger of prejudice to the [party not under scrutiny], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.”

2017 WL 2733776, at *1 (quoting *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997)). This Court will grant Rule 6(b)(1)(B) motions based on a demonstration of excusable neglect when, as here, the non-movant “suffered little prejudice”, the movant “did not act in bad faith”, and “the delay . . . is not substantial[.]” *Id.*

The deadline to file a response to the Amended Counterclaim was October 10, 2018. Counsel for ALPS inadvertently calendared an incorrect October 17, 2018 deadline to respond to the Amended Counterclaim—which was filed one week after the Gewerter Defendants’ original counterclaim—and did not discover the incorrect deadline until the date of this motion, as it began to file its response to the Amended Counterclaim. The mistake was inadvertent and

1 excusable, the one-week delay will have no impact on the judicial proceedings in this litigation,
2 neither ALPS nor its counsel acted in bad faith, and as demonstrated by the Gewerter
3 Defendants' agreement not to oppose this motion, the Gewerter Defendants will not suffer any
4 prejudice from the brief one-week delay.

5 For the reasons described above, ALPS respectfully requests the Court (a) grant its
6 motion for a one-week extension of time until October 17, 2018, the date of this motion, to
7 respond to the Amended Counterclaim, and (b) accept ALPS's response to the Amended
8 Counterclaim, which ALPS will file today.

9 Dated this 17th day of October, 2018.

11 ALPS PROPERTY & CASUALTY
12 INSURANCE COMPANY, Plaintiff

13 /s/ Brooke H. McCarthy

14 Kevin D. Hartzell (*pro hac vice*)
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28 IT IS SO ORDERED:

UNITED STATES MAGISTRATE JUDGE

26 

27 DATED: October 18, 2018

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2018, I electronically filed the foregoing
**PLAINTIFF ALPS PROPERTY & CASUALTY INSURANCE COMPANY'S MOTION
FOR EXTENSION OF TIME TO RESPOND TO THE GEWERTER DEFENDANTS'
AMENDED COUNTERCLAIM** with the Clerk of the Court using the CM/ECF system,
which will send notification of such filing to the following:

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